

1-1 By: Wentworth S.B. No. 165  
1-2 (In the Senate - Filed January 10, 2005; February 1, 2005,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 April 11, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 1; April 11, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 165 By: Wentworth

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of private process servers; providing  
1-11 penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The Civil Practice and Remedies Code is amended  
1-14 by adding Title 8 to read as follows:

1-15 TITLE 8. CIVIL PROCESS

1-16 CHAPTER 191. PRIVATE PROCESS SERVERS

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 191.001. DEFINITIONS. In this chapter:

1-19 (1) "Civil court" includes:

1-20 (A) a civil district court;

1-21 (B) a family district court;

1-22 (C) a county court at law;

1-23 (D) a probate court;

1-24 (E) a justice court; and

1-25 (F) a small claims court.

1-26 (2) "Civil process" means all process issued or  
1-27 sanctioned by a civil court.

1-28 (3) "Commission" means the Texas Commission of  
1-29 Licensing and Regulation.

1-30 (4) "Constable" means a constable, deputy constable,  
1-31 or reserve deputy constable.

1-32 (5) "Department" means the Texas Department of  
1-33 Licensing and Regulation.

1-34 (6) "Executive director" means the executive director  
1-35 of the department.

1-36 (7) "Person" means an individual.

1-37 (8) "Private process server" means a person who, on  
1-38 behalf of a private process service business, serves or offers to  
1-39 serve civil process.

1-40 (9) "Private process service business" means a person  
1-41 or business entity registered with the department as a business  
1-42 that serves or offers to serve civil process.

1-43 (10) "Public servant" has the meaning assigned by  
1-44 Section 1.07, Penal Code.

1-45 (11) "Sheriff" means a sheriff, deputy sheriff, or  
1-46 reserve deputy sheriff.

1-47 Sec. 191.002. APPLICABILITY OF CHAPTER. (a) This chapter  
1-48 does not apply to a sheriff or constable engaged in the discharge of  
1-49 that person's official duties. A sheriff or constable who serves  
1-50 civil process other than in the performance of official duties must  
1-51 be licensed or registered under this chapter.

1-52 (b) This chapter does not apply to an investigator who is a  
1-53 peace officer employed by a county or district attorney in this  
1-54 state engaged in the discharge of that person's official duties or  
1-55 in the delivery of nonjudicial notices. An investigator described  
1-56 by this subsection who serves civil process other than in the  
1-57 performance of official duties must be licensed or registered under  
1-58 this chapter.

1-59 (c) This chapter does not limit or restrict the service of  
1-60 process in this state as provided by a court order in a specific  
1-61 civil case in which the presiding magistrate or judge has  
1-62 determined the credibility of the person designated to serve the  
1-63 process. A court may not issue a blanket or standing order

2-1 authorizing service of process.  
2-2 (d) This chapter does not apply to a court reporter  
2-3 certified under Chapter 52, Government Code.

2-4 [Sections 191.003-191.050 reserved for expansion]

2-5 SUBCHAPTER B. LICENSE AND REGISTRATION REQUIREMENTS

2-6 Sec. 191.051. LICENSE OR REGISTRATION REQUIRED. (a)

2-7 Except as provided by Section 191.002, a person may not serve civil  
2-8 process in this state unless the person is licensed under this  
2-9 chapter and serves the process through a private process service  
2-10 business.

2-11 (b) A person who is not a license holder and who is not  
2-12 exempt under Section 191.002 may serve outside this state a civil  
2-13 process issued by a civil court of this state if the person:

2-14 (1) is authorized by law, rule, or court order in the  
2-15 person's jurisdiction to serve process;

2-16 (2) is a disinterested person competent to make an  
2-17 oath of that fact; and

2-18 (3) has the return of service acknowledged by an  
2-19 officer authorized to administer oaths in the jurisdiction in which  
2-20 the civil process was served.

2-21 (c) A person or business entity may not represent that the  
2-22 person or business entity is a private process server or private  
2-23 process service business unless the person is licensed, or the  
2-24 business entity is registered, under this chapter.

2-25 Sec. 191.052. PRIVATE PROCESS SERVICE BUSINESS  
2-26 APPLICATION. An applicant for registration as a private process  
2-27 service business must submit an application on a form prescribed by  
2-28 the commission. To be eligible to register under this section, the  
2-29 applicant must:

2-30 (1) submit the nonrefundable application fee; and

2-31 (2) have a person licensed under this chapter assigned  
2-32 as the responsible party for the business.

2-33 Sec. 191.053. LICENSE APPLICATION. (a) An applicant for a  
2-34 process server license under this chapter must submit an  
2-35 application on a form prescribed by the commission. To be eligible  
2-36 for a license under this section, an applicant must:

2-37 (1) be at least 18 years of age;

2-38 (2) demonstrate the applicant's honesty,  
2-39 trustworthiness, and integrity;

2-40 (3) submit the nonrefundable application fee; and

2-41 (4) comply with the requirements adopted under  
2-42 Subsection (b).

2-43 (b) Each license applicant must provide proof to the  
2-44 department in a manner acceptable to the department of completion  
2-45 of a department-approved 10-hour course on civil process and  
2-46 regulation and rules consisting of at least eight hours of  
2-47 instruction on service of process and two hours of instruction on  
2-48 department regulation and rules.

2-49 Sec. 191.054. CRIMINAL HISTORY RECORD CHECK. (a) Each  
2-50 applicant for a process server license under this chapter shall  
2-51 disclose to the department in the manner prescribed by the  
2-52 commission any conviction of the applicant for a misdemeanor  
2-53 involving moral turpitude or a felony.

2-54 (b) On receipt of an original application for issuance of a  
2-55 process server license, the department shall conduct a thorough  
2-56 background investigation of each individual applicant to determine  
2-57 whether the applicant is qualified under this chapter. The  
2-58 investigation must include:

2-59 (1) the submission of fingerprints by the applicant  
2-60 for processing through appropriate local, state, and federal law  
2-61 enforcement agencies; and

2-62 (2) the examination by the department of law  
2-63 enforcement records maintained by a local, state, or federal law  
2-64 enforcement agency.

2-65 (c) On receipt of an application for renewal of a process  
2-66 server license, the department shall conduct a background  
2-67 investigation of each individual applicant to determine whether the  
2-68 applicant is qualified under this chapter. The investigation must  
2-69 include examination by the department of law enforcement records

3-1 maintained by a local, state, or federal law enforcement agency.

3-2 (d) A background check under this section and the  
 3-3 department's consideration of any criminal conviction is governed  
 3-4 by:

3-5 (1) this chapter;

3-6 (2) Sections 411.093 and 411.122, Government Code; and

3-7 (3) Chapter 53, Occupations Code.

3-8 (e) The conviction of an applicant of a crime does not  
 3-9 automatically:

3-10 (1) disqualify the applicant;

3-11 (2) require revocation of a license or registration;

3-12 or

3-13 (3) require denial of an application for renewal of a  
 3-14 license or registration.

3-15 (f) An application for issuance or renewal of a license by a  
 3-16 person who has pled guilty to a crime and been placed on deferred  
 3-17 adjudication in any jurisdiction shall be considered on the basis  
 3-18 of the criteria set forth in Subsections (d) and (e).

3-19 Sec. 191.055. ISSUANCE OF LICENSES AND REGISTRATIONS.

3-20 (a) The department shall issue a business registration or process  
 3-21 server license to an applicant who complies with the appropriate  
 3-22 requirements of this chapter, passes the criminal history record  
 3-23 check, as applicable, and pays all required fees.

3-24 (b) Except as provided by Subsection (c), the department  
 3-25 shall issue the license or registration not later than the 60th day  
 3-26 after the date on which the application is received by the  
 3-27 department.

3-28 (c) If the department is notified by the Department of  
 3-29 Public Safety that a criminal history record check affecting an  
 3-30 applicant will not be completed within the 60 days prescribed by  
 3-31 Subsection (b), the department shall notify the applicant of the  
 3-32 delay.

3-33 Sec. 191.056. TERM OF LICENSE AND REGISTRATION; RENEWAL;  
 3-34 RESPONSIBLE PARTY TERMINATION. (a) A license or business  
 3-35 registration issued under this chapter expires on the first  
 3-36 anniversary of the date of issuance.

3-37 (b) The department shall send a renewal notice to each  
 3-38 license holder and registered business not later than the 90th day  
 3-39 before the date of expiration of the license or registration.

3-40 (c) A license holder or registered business may renew the  
 3-41 license or registration by submitting to the department before the  
 3-42 expiration date, on a form prescribed by the commission, a renewal  
 3-43 application accompanied by the renewal fee. To renew a license, the  
 3-44 license holder must also present evidence satisfactory to the  
 3-45 department of completion, before the expiration of the license, of  
 3-46 a department-approved continuing education seminar consisting of  
 3-47 at least four hours of instruction in civil process and two hours of  
 3-48 instruction in department rules.

3-49 (d) A registered business shall notify the department in  
 3-50 writing not later than the 14th day after the date on which the  
 3-51 employment of a private process server designated as a responsible  
 3-52 party is terminated.

3-53 [Sections 191.057-191.100 reserved for expansion]

3-54 SUBCHAPTER C. PRACTICE BY LICENSE HOLDERS

3-55 Sec. 191.101. POWERS AND DUTIES OF LICENSE HOLDERS. (a) A  
 3-56 license holder may serve civil process issued by the courts of this  
 3-57 state in the manner provided by law for service by sheriffs and  
 3-58 constables. The person may serve the process anywhere in this  
 3-59 state.

3-60 (b) A license holder may determine the location of an  
 3-61 individual for the purpose of serving civil process.

3-62 (c) A license holder may serve all civil process, except for  
 3-63 a writ of attachment, writ of sequestration, distress warrant, writ  
 3-64 of forcible entry and detainer, temporary ex parte protective  
 3-65 order, protective order, writ of habeas corpus, writ of mandamus,  
 3-66 trial of right of property, turnover order, or writ of certiorari.

3-67 (d) A license holder may not serve a civil process in any  
 3-68 action in which the license holder or the registered business that  
 3-69 employs the license holder is an interested party.

4-1 (e) An employee of an attorney or a law firm may not serve a  
 4-2 civil process, except a subpoena for a trial or for an oral  
 4-3 deposition, relating to an action in which the employing attorney  
 4-4 or law firm is counsel to a party.

4-5 (f) A license holder may not have a firearm on the license  
 4-6 holder's person when in the act of serving civil process, unless the  
 4-7 license holder is also a peace officer or an honorably retired peace  
 4-8 officer authorized to carry a firearm. A weapon may not be visible  
 4-9 during the delivery of civil process.

4-10 (g) A license holder may not be assigned as the responsible  
 4-11 party for more than one registered business in which the person does  
 4-12 not have an ownership interest of more than 50 percent of the  
 4-13 business.

4-14 Sec. 191.102. COSTS. A fee charged and collected by a  
 4-15 license holder or registered business for service of process may be  
 4-16 charged as costs in a judicial proceeding. Fees charged by a  
 4-17 license holder or registered business for service of process  
 4-18 exceeding the service of process fees set by the commissioners  
 4-19 court in the county in which the case is pending, may not be charged  
 4-20 as costs in a judicial proceeding unless otherwise approved by the  
 4-21 judge presiding over the case.

4-22 Sec. 191.103. PUBLIC SERVANT. An assault on a license  
 4-23 holder during the delivery of civil process shall be treated as an  
 4-24 assault on a public servant. A county is not liable for the actions  
 4-25 of a license holder unless the license holder is an employee of the  
 4-26 county.

4-27 Sec. 191.104. IDENTIFICATION NUMBER. (a) The department  
 4-28 shall issue to each license holder and registered business a unique  
 4-29 identification number. The license holder and registered business  
 4-30 shall provide that unique number with each return of service made by  
 4-31 that person for the registered business that is filed with the clerk  
 4-32 of the appropriate court.

4-33 (b) The unique number of the private process server and the  
 4-34 registered business on behalf of which the server is working must be  
 4-35 provided to each person served. A license holder shall include the  
 4-36 license holder's unique identification number on each valid process  
 4-37 return and on each delivery copy of process served. Failure to  
 4-38 include the registered business's or person's unique identification  
 4-39 number on each valid process return does not render the service of  
 4-40 process invalid.

4-41 (c) The department shall issue to each license holder a  
 4-42 photo identification card with the person's unique identification  
 4-43 number on the card. The department shall determine the size,  
 4-44 design, and content of the identification card. The card remains  
 4-45 the property of the state and must be returned on demand by the  
 4-46 department.

4-47 (d) A license holder shall produce the license holder's  
 4-48 identification card to any person requesting it during the  
 4-49 performance of service of process.

4-50 (e) An identification card, badge, insignia, seal, patch,  
 4-51 or other form of identification that may be construed to be that of  
 4-52 a peace officer or employee of a county or state agency may not be  
 4-53 worn or displayed by a license holder.

4-54 Sec. 191.105. RETURN OF SERVICE OF PROCESS. A registered  
 4-55 business or license holder shall return to the issuing court a sworn  
 4-56 return of service verifying the truthfulness of the return for any  
 4-57 process served in this state. The return of service must be  
 4-58 returned to the issuing court not later than the fifth business day  
 4-59 after the date service is completed.

4-60 [Sections 191.106-191.150 reserved for expansion]

4-61 SUBCHAPTER D. DEPARTMENT ENFORCEMENT

4-62 Sec. 191.151. DISCIPLINARY ACTIONS. (a) The commission  
 4-63 may deny, suspend, or revoke a license or registration, as  
 4-64 appropriate, and the commission may impose an administrative  
 4-65 penalty under Subchapter F, Chapter 51, Occupations Code, on a  
 4-66 finding that:

4-67 (1) a registered business has:

4-68 (A) refused to permit an examination by the  
 4-69 department of the records required to be maintained by a registered

5-1 business under rules adopted under this chapter; or  
 5-2 (B) allowed a person to serve process on the  
 5-3 registered business's behalf while knowing that the person is not  
 5-4 legally authorized to do so; or  
 5-5 (2) a license holder has:  
 5-6 (A) violated this chapter, a rule adopted under  
 5-7 this chapter, or an order of the executive director or commission;  
 5-8 (B) knowingly made a false or fraudulent return  
 5-9 of service; or  
 5-10 (C) been convicted of a misdemeanor that directly  
 5-11 relates to the duties and responsibilities involved in performing  
 5-12 the duties of a process server or of any felony.  
 5-13 (b) Proceedings for the denial, revocation, or suspension  
 5-14 of a license or registration, for the imposition of an  
 5-15 administrative penalty, and for an appeal from the proceeding are  
 5-16 governed by Chapter 51, Occupations Code, and Chapter 2001,  
 5-17 Government Code.  
 5-18 Sec. 191.152. SUMMARY SUSPENSION. (a) On receiving  
 5-19 written notice from the Department of Public Safety of the State of  
 5-20 Texas or another law enforcement agency that a person licensed  
 5-21 under this chapter has been arrested for or charged with an offense  
 5-22 constituting a Class B misdemeanor or a greater offense, the  
 5-23 department may summarily suspend the person's license.  
 5-24 (b) To initiate a proceeding under Subsection (a), the  
 5-25 department must serve notice to the person and to any registered  
 5-26 business that has assigned the person as a responsible party. The  
 5-27 notice must:  
 5-28 (1) inform the person of the right to a hearing on the  
 5-29 summary suspension;  
 5-30 (2) state the alleged violations that constitute the  
 5-31 grounds for the summary suspension;  
 5-32 (3) indicate the date and place of the hearing on the  
 5-33 summary suspension, which must be not earlier than the fifth day and  
 5-34 not later than the 14th day after the date notice is issued;  
 5-35 (4) be personally served on the person or mailed to the  
 5-36 person by certified or registered mail, return receipt requested,  
 5-37 to the individual's mailing address as it appears on department  
 5-38 records; and  
 5-39 (5) be sent by registered or certified mail, return  
 5-40 receipt requested, to any registered business required to be  
 5-41 notified.  
 5-42 (c) The suspension is effective at the time the notice is  
 5-43 served.  
 5-44 (d) At the summary suspension hearing, the individual may  
 5-45 show cause why, pending final hearing on the suspension, the  
 5-46 suspension should not continue.  
 5-47 (e) A final hearing may be scheduled at a time after the  
 5-48 final disposition of the charges that resulted in the summary  
 5-49 suspension.  
 5-50 (f) Chapter 2001, Government Code, does not apply to a  
 5-51 proceeding under this section, except for the final administrative  
 5-52 hearing.  
 5-53 (g) The dismissal of a complaint, information, or  
 5-54 indictment, or an acquittal, releases the person from the automatic  
 5-55 grounds for summary suspension under this section.  
 5-56 [Sections 191.153-191.200 reserved for expansion]  
 5-57 SUBCHAPTER E. PENALTIES  
 5-58 Sec. 191.201. CRIMINAL PENALTIES. (a) A person commits an  
 5-59 offense if the person practices as a private process server and is  
 5-60 not authorized to do so under this chapter. An offense under this  
 5-61 subsection is a Class A misdemeanor.  
 5-62 (b) A person commits an offense if the person knowingly or  
 5-63 intentionally falsifies a return of civil process or fails to  
 5-64 produce the identification card to a person requesting it during  
 5-65 the service of process. An offense under this subsection is a Class  
 5-66 A misdemeanor unless the person's intent is to defraud or harm  
 5-67 another, in which event the offense is a state jail felony.  
 5-68 SECTION 2. Subsection (d), Section 154.005, Local  
 5-69 Government Code, is amended to read as follows:

6-1 (d) A constable may receive, in addition to Subsection (c),  
6-2 all fees, commissions, or payments for delivering notices required  
6-3 by Section 24.005, Property Code, relating to eviction actions.  
6-4 Notices may only be delivered when not in conflict with the official  
6-5 duties and responsibilities of the constable. A constable  
6-6 delivering said notices must not be wearing upon his or her person a  
6-7 uniform or any insignia which would usually be associated with the  
6-8 position of constable nor may the constable use a county vehicle or  
6-9 county equipment while delivering said notices. [~~For purposes of~~  
6-10 ~~collecting fees for serving said notices, a constable is considered~~  
6-11 ~~a private process server.~~]

6-12 SECTION 3. (a) Except as provided by Subsection (b) of  
6-13 this section, Chapter 191, Civil Practice and Remedies Code, as  
6-14 added by this Act, takes effect September 1, 2005.

6-15 (b) Sections 191.051 and 191.201, Civil Practice and  
6-16 Remedies Code, as added by this Act, take effect March 1, 2006.

6-17 SECTION 4. Except as provided by Section 3 of this Act, this  
6-18 Act takes effect September 1, 2005.

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